

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

File No. RH04041574

Date: February 17, 2005

**Proposed Amendment of Section 2632.5(c)(1)(A)
Ordering of Motor Vehicle Reports**

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

SUBJECT OF HEARING

Notice is hereby given that the Insurance Commissioner proposes to amend Title 10, California Code of Regulations, Section 2632.5(c)(1)(A) clarifying that, to determine a driver's driving safety record, each insurer shall obtain and use a Motor Vehicle Report ("MVR") when an automobile insurance policy is issued, when a new driver is added to a policy, and no less frequently than every 36 months thereafter.

AUTHORITY AND REFERENCE

The Commissioner proposes to amend the proposed regulation under the express authority of California Insurance Code Section 1861.02. The proposed regulation implements, interprets, and makes specific California Insurance Code Sections 1861.02 and 1861.025.

HEARING DATE AND LOCATION

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation at the following date, time, and place:

**Tuesday, April 19, 2005 – 10:00 a.m.
California Department of Insurance Hearing Room
45 Fremont Street, 22nd Floor, San Francisco. CA 94105**

SUBMISSION OF COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Elizabeth Mohr
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4112

Questions regarding the hearing and comments on the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Daniel M Goodell
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4191

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, in care of the contact person, at the address listed above, by no later than **5:00 p.m. on April 19, 2005**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail sent to the following e-mail address: mohre@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person for this proceeding using the following fax number: (415) 904-5490. **Comments shall be transmitted by one method only and are subject to the deadline for written comments set forth above.**

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Subchapter 4.9, Title 10, California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking shall also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Summary of Existing Law

California Insurance Code Section 1861.02(a) provides that rates and premiums for an automobile insurance policy shall be determined by application of various factors in decreasing order of importance. The first factor is the insured's driving safety record.

California Insurance Code Section 1861.025 generally provides that a person is qualified to purchase a Good Driver Discount policy if he or she has been licensed to drive a motor vehicle for the previous three years and during that time has maintained a specified driving record.

Title 10, California Code of Regulations, Section 2632.5(c) defines the first mandatory factor (the insured's driving safety record) as the public record of traffic violation convictions available from the California Department of Motor Vehicles, together with similar public records of traffic violation convictions that are available from other jurisdictions.

However, existing law does not explicitly establish time periods within which insurers shall order MVRs to rate and underwrite an automobile insurance policy.

Policy Statement Overview and Effect of Proposed Action

The proposed regulation would clarify that, to determine a driver's driving safety record for purposes of California Insurance Code Sections 1861.02(a)(1) and 1861.025, each insurer shall obtain a Motor Vehicle Report for every driver listed on the policy at the time of policy application, and for each new driver added to the policy at the time the driver is added, and no less frequently than every 36 months thereafter, if the policy remains in effect. Corresponding to the Good Driver Discount requirement, no insurer shall rate or underwrite a new or renewal policy based upon an MVR older than 36 months at the time the policy is issued or renewed.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

This proposed regulation does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, and no other nondiscretionary cost or savings imposed on local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Department has made an initial determination that adoption of the proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulation simply clarifies and makes specific existing legal requirements.

However, the Commissioner invites comment on proposed alternatives designed to lessen any adverse economic impact on business while ensuring compliance with all applicable legal requirements.

The types of businesses affected by the proposed regulation are insurers transacting automobile insurance in the State of California.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Although some insurers may incur additional costs to obtain MVRs, the proposed regulation clarifies existing law.

EFFECT ON JOBS/BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulation may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulation will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The proposed regulation will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the

proposed regulation. The Commissioner invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The matters proposed herein will affect insurance companies, and therefore will not affect small business. (Gov. Code Section 11342.610, subd. (b), para. (2).)

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to, or mandating, the proposed regulation.

OTHER STATUTORY REQUIREMENTS

There are no other specific statutory requirements applicable to the proposed regulation.

TEXT OF REGULATION AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based as well as the express terms of the proposed action. Upon request, the proposed text and initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulation, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact person listed above.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon **written or e-mail** request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's website.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulation, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website, <http://www.insurance.ca.gov>. In the "Quick Links" section, click on Legal Information, then on Proposed Regulations. When the "Search" screen appears, enter RH04041574 (the Department's regulation file number for this proceeding) in the "Search for" field.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

Dated: February 17, 2005

JOHN GARAMENDI
Insurance Commissioner

By: /s/
Elizabeth Mohr
Assistant Chief Counsel